88-2119

Supreme Court, U.S.
FILED
JUN 28 1989
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

EUGENE MEYER, *et al.*,
Petitioners,

vs.

TIMOTHY D. BARNES, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals
For the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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(314) 961-4365
Attorney for Petitioner

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QUESTION PRESENTED

1.

Is a labor union severance pay plan, reaffirmed after bankruptcy of the local union, subject to the provisions of the Employment Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001, *et seq.*

PARTIES IN THE COURT BELOW

1. The Petitioners are Eugene Meyer, Thomas C. Welch, Thomas P. Knox, Theodore N. Welch, John C. Fisher, and James T. Schmidt, who are former officers and business agents of the Highway and City Freight Drivers, Dockmen and Helpers, Local Union No. 600, which is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

2. The Respondents are Timothy D. Barnes, Ernest Kon, Robert Robertson, James Mason, individually and as representatives, officers and agents of the Highway, City and Air Freight Drivers, Dockmen and Helpers, Local Union No. 600, a labor union, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an unincorporated labor organization, and, Jackie Presser and Weldon Mathis, individually and as representatives, officers and agents of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an unincorporated labor organization.

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TIMOTHY D. BARNES, *et al.*,
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For the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

The Petitioners,[1] Eugene Meyer, Thomas C. Welch, Thomas P. Knox, Theodore N. Welch, and John C. Fisher, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit, entered in this proceeding on February 6, 1989.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Appeals is reported at 867 F.2d 464 (8th Circuit 1987), and is set out in the separate Appendix to this Petition at pp. A-11 - A-16. The orders of the Court of Ap-

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[1] Eugene C. Lemke, a Plaintiff in the proceeding below, has not joined as a Petitioner.

peals affirming the District Court and denying rehearing are set out in the Appendix at p. A-17. The opinion of the District Court is unreported. The opinion is set out in the Appendix at pp. A-3 - A-8.

JURISDICTION

The judgment of the Court of Appeals affirming the District Court's granting of summary judgment in the case was entered on February 6, 1989 (A-11).

The Court of Appeals entered an order denying the timely Petition for Rehearing en banc, and also denying the Petition for Rehearing on March 30, 1989, and this Petition for Certiorari is filed within 90 days of that date (A-17). The jurisdiction of this Court is invoked under 28 U.S.C. 2101(c).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

This case involves the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1000 *et. seq.* (ERISA).

STATEMENT OF THE CASE

Petitioners are former officers and business agents of Local Union 600 of the Highway and City Freight Drivers, Dockmen and Helpers Union. Local 600 went into bankruptcy in September, 1976. Petitioners held their positions from 1975 and following the bankruptcy proceedings. A proof of claim in bankruptcy was filed by Petitioners for severance pay under the locals' welfare benefit plan. Petitioners reaffirmed the welfare benefit plan providing for severance pay as officers of the union following discharge in bankruptcy under the Bankruptcy Act.[2] Petitioners were defeated in an election of officers in early

[2] The Bankruptcy Act in effect in 1980, when the Union obtained its discharge, prescribed no procedures for reaffirmation at that time.

December, 1980. Subsequent thereto, they reaffirmed the severance pay plan. Subsequent demand upon the new officers of the local for benefits under the plan were denied. Petitioners exhausted their remedies within the local and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with which it was affiliated. Suit was thereafter filed in the Circuit Court of the City of St. Louis, Missouri, to seek enforcement of the severance pay plan benefits. The case has a complicated history. It was originally filed as a declaratory judgment action in the State Court; thereafter removed to Federal Court and then remanded to State Court; again removed to Federal Court on grounds of Federal jurisdiction under ERISA; thereafter the matter was placed on the trial docket of the Federal Court until the Court granted the motion of Respondents for summary judgment. The United States District Court found that local 600's reaffirmation of the severance pay plan was in conflict with the Constitution of the International Union. Neither the ERISA statute or state law controlled the decision of the Court. (app. page A-8). The local union had been out of bankruptcy proceedings for four months when the plan was reaffirmed. The local union continued to function as a labor union throughout the bankruptcy, and members continued to pay regular dues.

The severance pay plan did not cause the bankruptcy of the local union. Bankruptcy was precipitated by a judgment rendered against the union for an unlawful strike in the sum of $5,500,000.00 plus.

Although stipulated that the severance pay plan was in existence for ten years prior to the bankruptcy, the United States Court of Appeals for the Eighth Circuit found that the Petitioners had not established the existence of the severance pay plan, although it did acknowledge that welfare benefit plans such as the severance pay plan are subject to provisions of ERISA. (app. page A-16). The Court of Appeals affirmed summary judgment, again relying upon the relationship of the local union and the International's constitution. (app. page A-15).

REASONS FOR GRANTING THE WRIT

THIS CASE RAISES SIGNIFICANT QUESTIONS CONCERNING THE APPLICABILITY OF THE EMPLOYER RETIREMENT INCOME SECURITY ACT OF 1974, P.L. 93-406, TO UNFUNDED WELFARE BENEFIT PLANS IN EXISTENCE PRIOR TO THE PASSAGE OF THAT ACT WHICH HAVE BEEN REAFFIRMED FOLLOWING BANKRUPTCY PROCEEDINGS, AND IS OF NATIONAL IMPORTANCE CONCERNING THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, WHICH SHOULD BE RESOLVED BY THIS COURT.

This case presents for the Court's determination the issue of whether the broad usurpation of Common Law under the Employee Retirement Income Security Act of 1974, ERISA, Public Law 93-406, permits the application of common law in governing the remedies of beneficiaries under a union welfare benefit plan who have been denied benefits.[3] The severance pay plan involved is exempt from certain substantive requirements of ERISA, such as funding and participation. 29 USCS § 1051(1) ERISA § 201(1), 29 USCS § 1081(a)(1) ERISA § 301(1).

Initially, we point out that the analysis of the Eighth Circuit Court of Appeals is seriously deficient in stating that the local union had not implemented a severance pay plan. (app. page A-16). The plan was in existence since 1966, and was reaffirmed following bankruptcy. Presumably, the Eighth Circuit considered a written plan to be a mandatory pre-requisite under ERISA, (app. page A-10). Under ERISA, a written plan is not a prerequisite. The surrounding circumstances determine whether a reasonable person could ascertain the intended

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[3] ERISA was designed to protect Interstate Commerce, the federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans. 29 USCS § 1001(c) ERISA § 2(c).

benefits, beneficiaries, source of financing, and procedures for receiving benefits. See *Donovan v. Dillingham,* (1982 CA 11) 688 F.2d 1367. Therefore, a written plan was not a pre-requisite to a remedy, in light of the fact that the actual existence of the plan was stipulated by the parties below.

The Eighth Circuit was correct, however, when it stated that severance pay plans are welfare benefit plans under ERISA. (app. page A-16). See *Simmons v. Diamond Shamrock Corporation,* 844 F.2d 517, 520. Nonetheless, the opinion of the District Court was affirmed on theories resting on common law principles. (app. page A-15).

Petitioners argue that Congress, in enacting ERISA, intended that the degree to which common law and state law was usurped by ERISA was to be determined in the lower courts. Here, state law was not directly involved but rather the interpretation of the Constitution of the International Union which in the last analysis became the controlling factor in the decision of the lower courts. (app. page A-15). The lower courts made no substantive ERISA analysis, thereby creating uncertainty regarding the remedies under ERISA for beneficiaries of unfunded welfare benefit plans such as the one in issue here. Since a trial was precluded by the granting of summary judgment, no evidence was adduced to permit analysis of the plan under applicable Labor Department regulations to determine remedies available under ERISA, 29 CFR § 2510.3-2(b)(1). Congress has given the Courts the duty to create federal common law concerning aspects of employee benefit plans not specifically regulated under ERISA, such as the labor union severance pay plan involved here. *Donovan v. Dillingham,* (1982, CA 11) 688 F.2d 1367. For example, the fact that an unfunded *deferred compensation* plan had been exempted from most of the substantive provisions of ERISA, like the severance pay plan here in issue, did not signify a congressional intent to exempt such a plan from private civil action under ERISA. See *Barrowclugh v. Kidder, Peabody & Co.,* (1985 CA 3) 752 F.2d 923, 6 EBC 1170.

Petitioners were employees of a local labor union intrinsically involved in the interstate commerce of this nation. They were employed not by the International Union of Teamsters, but by their St. Louis local. The severance pay plan was instituted by the local union, not by the International. Had Petitioners been employed by a private corporation, their expectations of severance pay and their remedies under ERISA would have been subject to a straightforward analysis under the statute. However, the lower courts unduly placed an additional burden upon the Petitioners as union employees by imputing a "bad-boy" clause to the ERISA statute. If unfunded severance pay benefits are subject to a "bad-boy" provision, as a matter of federal common law, then Petitioners were entitled to a trial on the merits of this theory, because this was a genuine issue of material fact. F.R.C.P. Rule 56(c). Trial was denied by the District Court on the basis of a provision of private law, to wit: the Constitution of the International Union. (app. page A-15).

By reversing the Eighth Circuit and permitting a trial on the merits, this Court will substantially enhance the body of federal common law relating to unfunded welfare benefit plans and the rights and remedies of union officers and agents who are integral components of interstate commerce in this nation.

CONCLUSION

If the Court allows the decision of the Eighth Circuit to stand, then the expectations of employees of unions will be subject to a set of standards significantly different from employees in private industry, and the potential adverse effects on interstate commerce will be substantially enhanced.

Respectfully submitted,

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Attorney for Petitioners

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
OFFICE OF THE CLERK
1114 Market Street
St. Louis, Missouri 63101

Eyvon Mendenhall
Clerk

Phone: 314-425-4315
FTS 279-4315

February 23, 1988

RE: 87-1218C(A)
Meyer vs. Barnes

Stephen Gilmore
1221 Locust St., Ste. 500
St. Louis, MO 63103

w/order x

Enclosed is a copy of a MEMORANDUM OPINION entered this day by the Honorable Roy W. Harper in the above-styled cause.

Cary Hammond
Jan Bond
7730 Carondelet, Ste. 222
Clayton, MO 63105

_____ Enclosed is a copy of an ORDER entered this date by the Honorable Roy W. Harper in the above-styled cause.

David Leo Uelmen
Scott D. Soldon
788 N. Jefferson St.
P.O. Box 92099
Milwaukee, WI 53202

_____ Enclosed is a copy of an ORDER & MEMORANDUM entered this date by the Honorable Roy W. Harper in the above-styled cause.

_____ Enclosed is a copy of a MEMORANDUM & ORDER entered this date by the Honorable Roy W. Harper in the above-styled cause.

Very truly yours,

EYVON MENDENHALL, CLERK

/s/ Carrie Murphy
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 87-1218C (A)

Eugene Meyer, et al.,
Plaintiffs,

vs.

Timothy D. Barnes, et al.,
Defendants.

MEMORANDUM OPINION

(Filed Feb. 23, 1989)

Two motions for summary judgment have been filed: One on behalf of defendants, Timothy Barnes, Ernest Kon, Bobby Robertson and James Mason, individually and as representatives of Local 600 (hereinafter referred to as the Local 600 motion), and the other on behalf of defendants, Jackie Presser, Weldon Mathis and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as the IBT motion). The cause of action arises under the Employment Retirement Income Security Act of 1974 (ERISA), 28 USC 1001, *et seq*.

The plaintiffs, Thomas C. Welch, Eugene Meyer, Theodore N. Welch, James T. Schmidt, John T. Fisher, Thomas P. Knox and Eugene Lemke, are former business officers, or officers comprising the Executive Board of Local 600.

Plaintiffs and defendants have stipulated that the following facts give rise to this litigation. On April 1, 1970, Local 600 struck several interstate trucking companies. Most of these trucking companies belonged to the Motor Carriers Council of St. Louis, Inc. (hereinafter Motor Carriers). On April 17, 1970, Motor Carriers filed suit against Local 600 in the district court,

alleging that the strike breached their collective bargaining agreement. On October 3, 1974, the Court entered judgment for Motor Carriers, and against Local 600 for $5,796.341.18. On appeal by Local 600, the Eighth Circuit affirmed. On September 24, 1976, Local 600 filed a petition in bankruptcy. Motor Carriers challenged the discharge in bankruptcy of the money awarded them by the district court's judgment. On March 12, 1979, the bankruptcy court ruled that Local 600's debt to Motor Carriers was non-dischargeable in bankruptcy.

Plaintiffs had been elected officers comprising the Executive Board of Local 600. The election took place in December, 1974. Under normal circumstances, plaintiffs would have taken office on January 1, 1975, but Local 600 had been placed under temporary trusteeship by IBT, with whom it is affiliated, and thus, plaintiffs did not actually assume their full duties until February 16, 1975, when IBT lifted the trusteeship. In August, 1980, when Local 600 emerged from bankruptcy, the same individuals remained in office. On December 8, 1980, an election for officers was held. Plaintiffs Welch, Fisher, Schmidt, Pettus and Giese were defeated. The newly elected officers took office on January 1, 1981, and pursuant to Local 600's Constitution and By-Laws, the new president dismissed plaintiffs Welch, Meyer and Lemke, trustees appointed by the new president's predecessor.

In December, 1976, plaintiffs filed proofs of claims in the Local 600 bankruptcy proceeding. These proofs of claims were for severance pay which plaintiffs claimed Local 600 owed to them, computed on the basis of one month's salary for each year of employment with Local 600. Plaintiffs based their claim for severance pay on the following resolution adopted by the Executive Board on February 13, 1974:

> "Any full-time officer or business representative who shall die or terminate his employment for any reason, other than discharge for cause, or shall vacate an elected office for

> any reason, shall receive severance pay in an amount equal to one month's pay for each full year of service, either as an officer or business representative, with a maximum of fifteen (15) months pay. Severance pay shall be computed at the rate of compensation of the officer or business representative at the time of his death, termination or vacation of office."

As part of the settlement agreement between Local 600 and Motor Carriers, each plaintiff, on March 31, 1980, filed a waiver whereby plaintiffs would relinquish their claims to any distribution from Local 600's bankrupt estate.

On December 8, 1980, after the election results were announced, the Local 600 Executive Board held a meeting. Plaintiffs Welch, Fisher, Schmidt and Knox comprised a majority of the seven-member board. At this meeting, the Board voted "to reaffirm all Local 600 employees' wages and/or salaries and all vacation time and/or pay and all monies to which they were entitled, at the time of the filing of the bankruptcy." The Board also voted to approve vacation pay to all officers, business representatives and organizers. It was necessary to cash in some certificates of deposit because Local 600's checking account would not cover the vacation pay. Local 600's Constitution and By-Laws require that all checks contain the signatures of both the president and the secretary-treasurer. Secretary-Treasurer Roy Howard resigned from office on December 29, 1980, two days prior to the expiration date of his term. The Board authorized Recording Secretary Schmidt to co-sign the checks with President Welch.

After the new Executive Board took office, the members refused to grant plaintiffs' demand for severance pay. Plaintiffs appealed to the Joint Council of Teamsters No. 13. The Joint Council refused to reinstate the issue of severance pay. Plaintiffs appealed to IBT, but IBT has not responded. Although the record demonstrates local 600's history of gran-

ting severance pay, only one payment was made subsequent to the affirmance by the Eighth Circuit of Motor Carrier's judgment. This was a payment equal to one week's salary made to the widow of one of Local 600's business agents, who had died during his term of employment.

On January 1, 1984, the Local 600 membership adopted a new Local 600 Constitution and By-Laws, which now provide, "No severance payment in any amount shall be paid to officers, agents and employees when leaving their positions." Note that the Local 600 Constitution and By-Laws incorporate by reference IBT's Constitution. In the event of inconsistencies, IBT's Constitution supercedes Local 600's Constitution and By-Laws. Note also that IBT's Constitution contains the following provision:

> "Local Unions shall not adopt By-Laws or take any action which would impair their ability to meet their financial obligations to the International Union and its subordinate bodies or interfere with the discharge of their obligations to their members in the negotiation and administration of collective bargaining agreements *and in conducting the affairs of the Local Union as a solvent organization.* (Emphasis added.) Art. VI, §4(b).

The Local 600 defendants have filed a motion for summary judgment on the grounds that the vote of the Board in December, 1980, wherein plaintiffs voted to authorize severance pay for themselves, was manifestly unreasonable, constituted a gross abuse of fiduciary duty to Local 600, violated IBT's Constitution, and was void under the Labor Management Reporting and Disclosure Act of 1959, 29 USC 501(c).

There is no evidence that defendants violated 29 USC 501. Local 600 makes a good argument, however, for finding that plaintiffs violated IBT's Constitution. The parties have stipulated that Local 600 is bound by IBT's Constitution. The pertinent sections of IBT's Constitution is set out above. The

parties have also stipulated that over the last several years Local 600 has made certain payments to Motor Carriers, has had a substantial financial deficit, and has maintained a checking account balance ranging from a high of $14,875.16 (1/1/87) to a low of $19,962.49 in the red (6/1/87). (See Exhibit A attached.)

Plaintiffs argue that they assert valid claims for severance pay because they are reaffirming claims waived during Local 600's bankruptcy proceeding. Plaintiffs conveniently avoid addressing IBT's constitutional provision which prevents local unions from taking action which would result in insolvency. The sequence of events and the timing of plaintiffs' actions leading to this dispute do not exhibit a showing of good faith by plaintiffs. But even if plaintiffs have been acting in good faith, IBT's Constitution plainly prohibits plaintiffs from bankrupting Local 600. Granting plaintiffs' request for severance pay would do just that. The motion of Local 600 for summary judgment will be granted.

IBT has also filed a motion for summary judgment on the grounds that they did not play a part in, nor control, authorize, or ratify either payment or non-payment of the severance pay amounts plaintiffs seek. IBT also claims they did not control the actions of Local 600. Along with its motion, IBT has filed the affidavit of Walter J. Shea, executive assistant to the General President and Vice-President of IBT. Shea has stated that local unions are not the agents of IBT, but rather, local unions are "self-governing, unincorporated associations * * *." He also stated that local unions establish their own wage and fringe benefit schedules for their officers and staff.

IBT cites authority to support its argument that wrongs committed by the local union may not automatically be imputed to the international organizations. *International Brotherhood of Electrical Workers, AFL-CIO, et al. (Franklin Electric Construction Co.),* 121 NLRB 143, 146-147 (1958); *Coronado Coal Co. v. UMWA,* 268 U.S. 295, 304 (1925). IBT concedes that

the local union might have been considered its agent had the local union acted while in trusteeship.

IBT lifted its trusteeship over Local 600 on February 16, 1975. Plaintiffs voted to reaffirm their severance pay claims on December 8, 1980. Plaintiffs claim that IBT's counsel told plaintiffs to file their claim for severance pay with Local 600's Executive Board, then with International's Joint Council, and then to the International Brotherhood. Plaintiffs claim that this advice by IBT's counsel constitutes recognition by IBT of severance pay obligations to plaintiffs. It could be that he was merely advising plaintiffs to exhaust any administrative remedies that might be available to them prior to filing this suit. But, in any event, this advice clearly does not constitute ratification of the severance plan, nor could it have justified behavior which was contrary to the IBT constitutional mandates. The motion of IBT will be granted.

Accordingly, the separate motion of defendants, Timothy Barnes, Ernest Kon, Bobby Robertson and James Mason, individually and as representatives of Local 600, and the separate motion of defendants, Jackie Presser, Weldon Mathis and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, are each sustained, and summary judgment is granted in each.

The Clerk of the Court will prepare and enter the proper orders to that effect.

/s/ Roy W. Harper
U.S. District Judge

EXHIBIT A

At the end of 1980, Local 600 owed $1,749,697.60 to the Motor Carriers Council.

At the end of 1981, Local 600 had an overall financial deficit of $1,410,109.00.

At the end of 1981, Local 600 still owed $1,433,556.60 to the Motor Carriers Council.

During the fiscal year ending December 31, 1981, Local 600 paid $250,302.40 to the Motor Carriers Council and paid $259,074.80 in per capita taxes.

At the end of 1982, Local 600 had an overall financial deficit of $1,175,878.00.

At the end of 1982, Local 600 still owed $1,164,570.75 to the Motor Carriers Council.

During the fiscal year ending December 31, 1982, Local 600 paid $268,985.85 to the Motor Carriers Council and paid $263,732.05 in per capita taxes.

At the end of 1983, Local 600 had an overall financial deficit of $918,896.00.

At the end of 1983, Local 600 still owed $932,977.85 to the Motor Carriers Council.

During the fiscal year ending December 31, 1983, Local 600 paid $231,592.90 to the Motor Carriers Council and paid $252,554.76 in per capita taxes.

At the end of 1984, Local 600 had an overall financial deficit of $625,754.00.

At the end of 1984, Local 600 still owed $715,921.85 to the Motor Carriers Council.

During the fiscal year ending December 31, 1984, Local 600 paid $217,056.00 to the Motor Carriers Council and paid $249,457.30 in per capita taxes.

At the end of 1985, Local 600 had an overall financial deficit of $486,268.00.

At the end of 1985, Local 600 still owed $518,733.70 to the Motor Carriers Council.

During the fiscal year ending December 31, 1985, Local 600 paid $197,188.15 to the Motor Carriers Council and paid $230,293.90 in per capita taxes.

AT the end of 1986, Local 600 had an overall financial deficit of $262,953.00.

At the end of 1986, Local 600 still owed $333,252.52 to the Motor Carriers Council.

During the fiscal year ending December 31, 1986, Local 600 paid $185,481.18 to the Motor Carriers Council and paid $233,240.15 in per capita taxes.

As to the time period from January through October of 1987, the beginning and ending balances of Local 600's regular checking account fluctuated between a high of only $14,875.16 (January 1, 1987) to a low of $19,962.49 in the red (June 1, 1987). Also during this time period, Local 600 made the following monthly payments to the Motor Carriers Council: January -$15,887.00; February - $17,230.00; March - $15,900.00; April -$16,891.00; May - $15,468.00; June - $15,455.00; July -$17,376.00; August - $17,349.85; September - $13,506.15; and October - $17,043.95, leaving a balance of $157,841.25 still owed as of the end of October of 1987. Further during this period Local 600 paid monthly per capita taxes of between $13,506.15 and $30,338.00.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 88-1531

Appeal from the United States District Court
for the Eastern District of Missouri

Eugene Meyer, Thomas C. Welch, Thomas P. Knox, Theodore N. Welch, John C. Fisher, James T. Schmidt and Eugene C. Lemke,

Appellants,

v.

Timothy D. Barnes, Ernest Kon, Robert Robertson, James Mason, individually, and as representatives, officers and agents, of the Highway, City and Air Freight Drivers, Dockmen & Helpers, Local Union No. 600, a Labor Union affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and Jackie Presser and Weldon Mathis, individually and as representatives, officers and agents of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers,

Appellees.

Submitted: November 16, 1988

Filed: February 6, 1989

Before FAGG and WOLLMAN, Circuit Judges, and WOODS*, District Judge.

WOLLMAN, Circuit Judge.

Appellants, former officers and business representatives of Highway, City and Air Freight Drivers, Dockmen and Helpers Local Union No. 600, appeal the district court's[1] grant of summary judgment to present officers of Local 600 and to officers of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (IBT). We affirm.

On October 3, 1974, the United States District Court for the Eastern District of Missouri rendered a judgment for $5,796,341.18 against Local 600 and in favor of The Motor Carriers Council of St. Louis, Inc. As a result, Local 600 filed a voluntary petition in bankruptcy in the United States Bankruptcy Court on September 24, 1976.

On December 8, 1976, appellants filed proofs of claims in the bankruptcy proceeding. They claimed, among other things, severance pay computed on the basis of one month's salary for each year of employment with Local 600. They based these claims on a resolution adopted by the Local 600 executive board on February 13, 1974:

> Any full-time officer or business representative who shall die or terminate his employment for any reason, other than discharge for cause, or shall vacate an elected office for any reason, shall receive severance pay in an amount equal

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* The HONORABLE HENRY WOODS, United States District Judge for the Eastern District of Arkansas, sitting by designation.

[1] The Honorable Roy W. Harper, Senior United States District Judge for the Eastern District of Missouri.

> to one month's pay for each full year of service, either as an officer or business representative, with a maximum of fifteen (15) months pay. Severance pay shall be computed at the rate of compensation of the officer or business representative at the time of his death, termination or vacation of office.

In the fall of 1979, Local 600 and the Motor Carriers Council entered into a "Memorandum of Proposed Agreement." This agreement formed the basis of a comprehensive settlement concerning the creditors in bankruptcy. On October 31, 1979, the court authorized the trustee in bankruptcy to enter into the agreement.

As part of the comprehensive settlement, the trustee stipulated with Local 600 to obtain the written waivers of its officers and business representatives who had filed claims in the bankruptcy proceeding. Accordingly, on March 31, 1980, appellants waived their claims to severance pay. On August 22, 1980, the bankruptcy court granted Local 600 a general discharge in bankruptcy and released it from all dischargeable debts. Because the court had earlier noted that the Motor Carriers Council judgment was nondischargeable, that judgment survived.

On December 8, 1980, appellants Theodore Welch, Fisher, and Schmidt were defeated at the Local 600 election of officers. The new president, under the 1974 Local 600 constitution and bylaws, could appoint and remove all business agents and organizers, subject to the approval of the executive board. After the new president took office, he removed appellants Meyer, Lemke, Knox, and Thomas Welch.

During the time between the election of officers on December 8, 1980, and the beginning of the newly-elected officials' term on January 1, 1981, appellants Theodore Welch, Fisher, Schmidt, and Knox comprised a majority of the seven-member executive board. On December 19, 1980, the executive board approved the following resolution:

> Be it resolved that the Officers and Business Representatives of Teamsters Local 600 be entitled to severance pay in the amount as set forth per Executive Board Meeting of February 13, 1974, a copy of said minutes and resolution being attached here to and incorporated herein;
>
> And be it further resolved that in the event Local 600 disputes the claims for severance pay, and it is determined that Local 600 is liable, then any and all attorneys' fees incurred by officers and/or business representatives in obtaining said severance pay shall be assessed against Local 600.

On December 31, 1980, the executive board agreed to send the incoming board a written demand for a hearing concerning the payment of severance pay. The new executive board held such a hearing in February of 1981. Appellants requested severance pay totaling $191,000. The executive board denied the requests, whereupon appellants initiated this action. Appellants alleged that they were entitled to severance pay under the union's constitution and bylaws and the resolution of February 13, 1974. They claimed that Local 600 and IBT were jointly and severally liable because IBT had "ratified, implemented, and reaffirmed" the severance pay policies during a trusteeship of Local 600 that existed from June 1974 to February 1975.

In reviewing a grant of summary judgment, we apply the same standard as that applied by the district court. *United Tel. Co. v. Johnson Publishing Co.*, 855 F.2d 604, 607 (8th Cir. 1988). We thus will affirm the lower court's grant of summary judgment if "there is no genuine issue as to any material fact and * * * the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

Local 600 and IBT assert that they do not owe appellants severance pay for several reasons: (1) the IBT constitution prohibits severance pay in the present circumstance; (2) appellants

violated their fiduciary duties under the Labor Management Reporting and Disclosure Act when they authorized the severance pay; and (3) appellants' claims for severance pay were discharged in Local 600's bankruptcy proceedings and were never validly reaffirmed. IBT additionally asserts that it is not responsible for the actions of Local 600 and neither participated in nor ratified the denial of severance pay.

The parties stipulated that Local 600 is bound by the IBT constitution. Article VI, Section 4(b) of the constitution provides the following:

> Local Unions shall not adopt Bylaws or take any action which would impair their ability to meet their financial obligations to the International Union and its subordinate bodies or interfere with the discharge of their obligations to their members in the negotiation and administration of collective bargaining agreements and in conducting the affairs of the Local Union as a solvent organization.

Given the authority of this section, the only remaining question is whether the December 19, 1980, resolution authorizing severance pay and appellants' subequent demand for payment interfered with Local 600's ability to operate as a solvent organization. The parties have stipulated that over the last several years Local 600 has had a financial deficit.[2] According-

---

[2] The parties stipulated that Local 600's financial situation from 1980 to 1986 was as follows:

	Debt to Motor Carriers Council	Overall Financial Deficit
1980	$1,749,697.60	--------
1981	1,433,556.60	$1,410,109.00
1982	1,164,570.75	1,175,878.00
1983	932,977.85	918,896.00
1984	715,921.85	625,754.00
1985	518,733.70	486,268.00
1986	333,252.52	262,953.00

ly, any request for and authorization of severance pay would interfere with Local 600's solvent operation.

Appellants claim that their actions did not interfere with Local 600's solvent operation because the union was already insolvent. This claim in essence is that $191,000 in additional debt is insignificant to an organization that already owes approximately $1,750,000. An addition of $191,000 in debt, however, would interfere with Local 600's ability to pay all other legal debts.

Appellants also contend that because they have not demanded immediate payment their claim does not violate the IBT constitution because Local 600 could delay paying until it is solvent. The resolution authorizing the severance pay itself, however, violated the IBT constitution. Because there is no valid authority on which to base the severance pay, payment—whether immediate or delayed—cannot be granted.

Appellants' final contention is that their claim is governed by the Employee Retirement Income Security Act of 1974 (ERISA). Although severance benefit plans are welfare benefit plans under ERISA, *see Simmons v. Diamond Shamrock Corp.*, 844 F.2d 517, 520 n.4 (8th Cir. 1988), appellants have not established that Local 600 implemented a severance benefit plan.

The order granting summary judgment is affirmed.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 88-1531

Eugene Meyer, et al.,
Appellants,

vs.

Timothy D. Barnes, et al.,
Appellees.

Appeal from the United States District Court
for the Eastern District of Missouri

The suggestion for rehearing en banc has been considered by the Court and is denied by reason of the lack of majority of active judges voting to rehear the case en banc.

The petition for rehearing is also ordered denied.

March 30, 1989

Order Entered at the Direction of this Court:

/s/ Robert D. St. Vrain

Clerk, U. S. Court of Appeals, Eighth Circuit.

Supreme Court, U.S.
FILED
AUG 24 1989
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 88-2119

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

EUGENE MEYER, et al., Petitioners,
v.
TIMOTHY D. BARNES, et al., Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS TIMOTHY D. BARNES, ERNEST KON, BOBBY ROBERTSON, AND JAMES MASON, INDIVIDUALLY AND AS REPRESENTATIVES, OFFICERS AND AGENTS OF HIGHWAY, CITY, AND AIR FREIGHT DRIVERS, DOCKMEN AND HELPERS LOCAL UNION NO. 600

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Attorneys for Respondents
Barnes, Kon, Robertson
and Mason

*Counsel of Record

LIST OF PARTIES

The parties to the proceedings below were: (a) the petitioners Eugene Meyer, Thomas C. Welch, Thomas P. Knox, Theodore N. Welch, John C. Fisher, and James T. Schmidt; (b) Eugene C. Lemke, a plaintiff in the proceeding below, who has not joined as a petitioner; (c) respondents Timothy D. Barnes, Ernest Kon, Bobby Robertson, and James Mason, individually and as representatives, officers and agents of Highway, City and Air Freight Drivers, Dockmen and Helpers Local Union No. 600, a labor union affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an unincorporated labor organization; and (d) Jackie Presser and Weldon Mathis, individually and as representatives, officers and agents of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an unincorporated labor organization.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

EUGENE MEYER, et al., Petitioners,
v.
TIMOTHY D. BARNES, et al., Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS TIMOTHY D. BARNES, ERNEST KON, BOBBY ROBERTSON, AND JAMES MASON, INDIVIDUALLY AND AS REPRESENTATIVES, OFFICERS AND AGENTS OF HIGHWAY, CITY, AND AIR FREIGHT DRIVERS, DOCKMEN AND HELPERS LOCAL UNION NO. 600

Respondents Timothy D. Barnes, Ernest Kon, Bobby Robertson, and James Mason, individually and as representatives, officers and agents of Highway, City, and Air Freight Drivers, Dockmen and Helpers Local Union No. 600 (the "Local 600 respondents"), respectfully request this Court to deny the petition for a writ of certiorari which seeks review of the opinion of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

Although the Local 600 respondents are generally satisfied with petitioners' references to the opinions below, the Local 600 respondents would like to correct an apparent typographical error. The opinion of the United States Court of Appeals for the Eighth Circuit in this proceeding was filed in 1989 rather than in 1987.

STATUTES INVOLVED

1. **Pertinent provisions of the Labor-Management Relations Act of 1959, as amended:**

29 U.S.C. §401(a) provides:

> (a) Standards for labor-management relations
>
> The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.

29 U.S.C. §402(q) provides:

> For the purposes of this chapter- . . .
>
> (q) "Officer, agent, shop steward, or other representative," when used with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority), but does not include salaried nonsupervisory professional staff, stenographic, and service personnel.

29 U.S.C. §501(a) provides:

(a) Duties of officers; exculpatory provisions and resolutions void

The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

II. **Pertinent Provisions of the Employee Retirement Income Security Act of 1974, as amended:**

29 U.S.C. §1002(1) provides:

For purposes of this subchapter:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

29 U.S.C. §1002(7) provides:

For purposes of this subchapter:

(7) The term "participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

29 U.S.C. §1002(8) provides:

For purposes of this subchapter:

(8) The term "beneficiary" means a person designated by a participant, or by the terms of an employee benefit plan, who is under or may become entitled to a benefit thereunder.

STATEMENT OF THE CASE

Petitioners, former officials of Highway, City and Air Freight Drivers, Dockmen, and Helpers Local Union No. 600 ("Local 600") from 1975 through 1980, seek a judgment in this case against Local 600 and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America ("IBT" or "the International")[1] for $166,000.00 in severance pay, equal to one month's salary for each year of employment with Local 600 for each petitioner, plus interest dating back to 1981, costs, and attorney's fees. In support of this demand, petitioners allege in their suit that the Local 600 constitution and bylaws and a resolution passed by the Local 600 executive board on February 13, 1974, constitute an employee welfare benefit plan or welfare plan for severance pay within the meaning of 29 U.S.C. §1002(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and that they (petitioners) are participants and beneficiaries pursuant to 29 U.S.C. §§1002(7) and (8) of ERISA. The district court granted summary judgment in favor of the Local 600 respondents and the IBT respondents, and the Eighth Circuit affirmed.

In 1974, the United States District Court for the Eastern District of Missouri entered judgment in excess of five million dollars in favor of the Motor Carriers Council of St. Louis, Inc., and against Local 600. As a result, Local 600 filed a voluntary petition in bankruptcy in September

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[1]Petitioners sued present Local 600 officers Timothy Barnes, Ernest Kon, Bobby Robertson, and James Mason as representatives of Local 600. Plaintiffs also sued Jackie Presser, the recently-deceased former president of the IBT, and current IBT secretary-treasurer Weldon Mathis as representatives of the International. Where distinction is necessary, the Local 600 representatives will be referred to as the "Local 600 respondents," and the International representatives will be termed the "IBT respondents." This brief is filed only on behalf of the Local 600 respondents.

of 1976. Thereafter, from November 12, 1976, to August 22, 1980, Local 600 was financially operated by a trustee in bankruptcy.

On December 8, 1976, each petitioner filed a proof of claim in the Local 600 bankruptcy proceeding in which each claimed, among other things, for amounts as severance pay computed on the basis of one month's salary for each year of employment with Local 600. They claimed entitlement to severance pay on the basis of a resolution passed by the Local 600 executive board on February 13, 1974:

> IT IS HEREBY RESOLVED by the Executive Board of Teamsters Local 600 that the severance pay policy established by this Executive Board on September 17, 1966, shall be revised and amended to provide as follows:[2]
>
> Any full time officer or business representative who shall die or terminate his employment for any reason, other than discharge for cause, or shall vacate an elected office for any reason, shall receive severance pay in an amount equal to one month's pay for each full year of service, either as an officer or business representative, with a maximum of fifteen (15) months' pay. Severance pay shall be computed at the rate of compensation of the officer of business representative at the time of his death, termination or vacation of office.

In March of 1979, the bankruptcy court ruled that Local 600's debt to the Motor Carriers Council was not dischargeable in bankruptcy. During the fall of 1979, Local 600

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[2]The minutes for the Local 600 executive board meeting for September 17, 1966, set forth the following: "Motioned by brother Capps that if any full time agent or officer who should leave his office or die, he shall receive one week's severance pay for each year of service with the union up to ten (10) years."

and the Motor Carriers Council entered into a "Memorandum of Proposed Agreement" which formed the basis of a comprehensive settlement concerning Local 600's creditors in bankruptcy. The bankruptcy court authorized the trustee in bankruptcy to enter into the agreement on October 31, 1979.

Pursuant to this agreement, the Motor Carriers Council agreed to accept 3.5 million dollars in the form of monthly payments from Local 600, with the payments to be computed as a percentage of Local 600's membership dues income. At the option of the Motor Carriers Council, default in the timely payment of any monthly installment could result in the acceleration of the entire amount due, which then totaled, with interest, over seven million dollars.

Also as part of the comprehensive settlement and pursuant to stiplation between Local 600 and the bankruptcy trustee, Local 600 agreed to obtain written waivers from all (then) present officers, business representatives and employees of Local 600 who had filed claims in the bankruptcy proceeding. Thus, on March 31, 1980, each petitioner filed with the bankruptcy court a signed, notarized waiver which stated:

> The undersigned hereby waives and relinquishes any and all claims, right and/or interest which the undersigned has, has had or may have under or by virtue of Claim No. ..... filed in the within-styled proceeding and further waives any and all right to receive a distribution from the above-captioned bankruptcy estate.

The bankruptcy court granted Local 600 a general discharge in bankruptcy on August 22, 1980, and released Local 600 from all dischargeable debts. However, the Motor Carriers Council judgment survived since it had been ruled to be non-dischargeable.

On December 8, 1980, less than five months after Local 600 had been discharged in bankruptcy, petitioners Theodore Welch, John Fisher and James Schmidt, as well as two Welch administration trustees, were defeated in their bid for reelection to union office.[3] After the Local 600 election results were announced, the Welch Local 600 executive board met that same evening and voted to approve payment of over $144,000.00 in vacation pay to all officers, business representatives and organizers of Local 600. Checks totaling this amount were cut that evening, although there were not sufficient funds in the Local 600 checking account to cover the checks. Pursuant to an arrangement with Local 600's bank, $200,000.00 in certificates of deposit were used to cover the vacation checks.

On December 19, 1980, the Local 600 executive board approved the following resolution:

> Be it resolved that the Officers and Business Representatives of Teamsters Local 600 be entitled to severance pay in the amount as set forth per Executive Board Meeting of February 13, 1974, a copy of said minutes and resolution being attached here to and incorporated herein;
>
> And be it further resolved that in the event Local 600 disputes the claims for severance pay, and it is determined that Local 600 is liable, then any and all

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[3]Although petitioner Thomas Knox was reelected to his part-time position as union trustee, he was subject to removal from his full-time position as business agent and organizer by the newly-elected Local 600 president. Pursuant to the Local 600 constitution and bylaws, the new president, upon assuming office, removed petitioner Knox as well as petitioners Eugene Meyer and Thomas Welch from their business agent positions. However, between the time of the Local 600 election of officers on December 8, 1980, and the time the newly-elected officials took office on January 1, 1981, petitioners Theodore Welch, Fisher, Schmidt, and Knox comprised a majority of the seven-person Local 600 executive board.

attorney's fees incurred by officers and/or business representatives in obtaining said severance pay shall be assessed against Local 600.

Under this formula, severance pay to outgoing officers, business agents and organizers would have totaled over $270,000.00. As is reflected on the Local 600 Trustees Report for December 1980, this amount exceeded the total assets of Local 600. Additionally, at the end of 1980, Local 600 still owed the Motor Carriers Council $1,749,697.60.

In February of 1981, the new executive board held a hearing on the severance pay demand of petitioners and others and denied the demand. No Local 600 officer or business agent has received any severance pay from Local 600 since the union filed its petition in bankruptcy.[4] Of the 22 Local 600 officers and agents who received amounts as severance pay between 1966 and 1976, all but three people who left office in 1974 received severance pay based on a formula of one week's pay for each year of service. Effective January 1, 1984, the revised Local 600 constitution and bylaws specifically prohibits the payment of severance pay to any officers, agents or employees.[5]

The parties stipulated that Local 600 is bound by the IBT constitution. Article VI, Section 4(b) of that constitution provides:

> Local Unions shall not adopt Bylaws or take any action which would impair their ability to meet their financial obligations to the International Union and its subordinate bodies or interfere with the discharge

---

[4]In fact, a severance payment in early 1976 to the widow of a business agent who died in office is the only severance payment which Local 600 has made to an officer or business agent since the Motor Carriers Council judgment was affirmed on appeal.

[5]Prior to 1984, severance pay was not mentioned in the Local 600 constitution and bylaws.

of their obligations to their members in the negotiation and administration of collective bargaining agreements and in conducting the affairs of the Local Union as a solvent organization.

The parties also stipulated that Local 600's financial situation from 1981 to 1986 was as follows:

	Debt to Motor Carriers Council	Overall Financial Deficit
1981	$1,433,556.60	$1,410,109.00
1982	1,164,570.75	1,175,878.00
1983	932,977.85	918,896.00
1984	715,921.85	625,754.00
1985	518,733.70	486,268.00
1986	333,252.52	262,953.00

	Paid to Motor Carriers Council	Per Capita Taxes Paid to IBT and Affiliates
1981	$250,302.40	$259,074.80
1982	268,985.85	263,732.05
1983	231,592.90	252,554.76
1984	217,056.00	249,457.30
1985	197,188.15	230,293.90
1986	185,481.18	233,240.15

During the first ten months of 1987, the beginning and ending balances of Local 600's regular checking account fluctuated between a high of only $14,875.16 to a low of negative $19,962.49. Also during this time period, Local 600 continued to make average monthly Motor Carriers payments of over $16,000.00 per month and paid monthly per capita taxes of between $13,506.15 and $20,338.00.

Since the severance pay vote on December 19, 1980, there has never been enough money in the Local 600 treasury to pay petitioners and their associates severance pay in the amounts voted. Further, in the professional

opinion of Local 600's certified public accountant, based upon his certified public accounting firm's annual financial audits of the books and records of Local 600 for the fiscal years ending December 31, 1980, 1981, 1982, 1983, 1984, 1985 and 1986,[6] payment by Local 600 of the severance pay amounts sought in this suit, or of a major portion thereof, could not have been made in December of 1980 or at any time since then through the present without putting Local 600 into a financial position in which the union could not pay its lawful debts and obligations as such debts and obligations became due, and thus bankrupting the Local 600 treasury.

The district court granted summary judgment in favor of the Local 600 respondents and the IBT respondents on the gounds that the IBT constitution plainly prohibited petitioners from bankrupting Local 600, that petitioners had violated the quoted provision of the IBT constitution in purporting to authorize severance pay for themselves in December of 1980, and that granting petitioners' request for severance pay would bankrupt Local 600. Affirming, the Eighth Circuit also found that the resolution of December 19, 1980, purporting to authorize severance pay, and petitioners' subsequent demand for severance payment interfered with Local 600's ability to operate as a solvent organization, in violation of the IBT Constitution. The court of appeals further held that, although severance benefit plans are welfare plans under ERISA, petitioners had not established that Local 600 implemented a severance benefit plan.

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[6]At the time this case was taken under submission by the district court, the audit of the Local 600 books for the 1987 fiscal year had not been completed.

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I. Neither the decision below nor the record supports the Question Presented in the petition.

The sole Question Presented in the petition is whether "a labor union severance pay plan, reaffirmed after bankruptcy of the local union, [is] subject to the provisions of the Employment [sic] Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001, **et seq.**" (Petition, p. i.) However, the Eighth Circuit did not decide that question in this case. Additionally, the facts of record will not support a determination of that question by this Court.

Petitioners pled this case as an ERISA case. They alleged in their suit that the Local 600 constitution and bylaws and a Local 600 executive board resolution passed in 1974 constitute an employee welfare benefit plan or welfare plan for severance pay within the meaning of 29 U.S.C. §1002(1) of ERISA. Petitioners further alleged in their suit that they are participants and beneficiaries pursuant to 29 U.S.C. §§1002(7)(8) of ERISA.

Respondents have not suggested, and the courts below did not find, that petitioners' claims are not subject to ERISA. The Eighth Circuit, citing **Simmons v. Diamond Shamrock Corp.,** 844 F.2d 517, 520 n. 4 (8th Cir. 1988),[7] specificially stated that severance benefit plans are welfare benefit plans under ERISA. However, the Eighth Circuit

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[7]As support for the finding that "[c]ourts have uniformly held that unfunded severance pay plans are an 'employee welfare benefit plan' covered by ERISA," the **Simmons** court cited **Holland v. Burlington Indus., Inc.,** 772 F.2d 1140 (4th Cir. 1985), which was summarily affirmed by this Court **sub nom. Brooks v. Burlington Indus., Inc.,** 477 U.S. 901 (1986).

held that petitioners had not established that Local 600 implemented a severance benefit plan. Petitioners have not asked this Court to review this finding.[8]

Additionally, the facts of record in this case will not support the formulation or the resolution of the Question Presented by petitioners. The Question Presented presumes the existence of a plan which was reaffirmed after the Local 600 bankruptcy. However, the Eighth Circuit specifically held that petitioners' attempt to authorize the amounts of severance pay for themselves in December of 1980 and their subsequent demand for payment violated the IBT constitution.[9] Petitioners' endeavors to create an entitlement to severance pay were thus void and of no effect, and, therefore, no severance pay plan was ever reaffirmed after Local 600's bankruptcy.

Quite simply, petitioners alleged a case under ERISA. Since respondents did not challenge petitioners' right to attempt to state their claims under ERISA, the Eighth Circuit was not presented with any controversy concerning the applicability of ERISA. However, the Eighth Circuit did determine that petitioners had violated the IBT constitution in attempting to authorize the severance pay for themselves. The fact that their case presented ERISA claims did nothing to assist them in overcoming their factual hurdles and in satisfying their burden of proof. Since the Eighth Circuit was not presented with, and thus did not decide, the sole

---

[8]Although petitioners allege that the parties stipulated to the actual existence of a plan, this is not correct. The parties stipulated to the 22 severance payments that were made by Local 600 to officers and business agents between 1966 and 1976. Respondents never stipulated to, and vehemently contested, the existence of any severance plan under which petitioners would be entitled to the claimed severance pay.

[9]Significantly, petitioners also do not ask this Court to review this holding.

Question Presented in the petition, no reason exists for the grant of certiorari.

II. The decision below is correct and raises no issues of conflict or importance warranting review by this Court.

The facts of record demonstrate both the correctness of the Eighth Circuit's decision and the uniqueness of this case. For these additional reasons, the Local 600 respondents respectfully suggest that no purpose would be served by granting certiorari herein.

The central reality of this case is inescapable: after having been defeated in the 1980 election but while still in office, petitioners sought to gut the union treasury for their own benefit. Their rapacious greed was matched only by their utter contempt for the welfare of Local 600.

The propriety and legality of the actions of union officials is determined by the union's constitution and bylaws and by the provisions of the Labor Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. §401, **et seq.** As the Eighth Circuit held, petitioners' conduct plainly violated the provisions of the IBT constitution prohibiting a local union from taking any action which would impair its ability to conduct its affairs as a solvent organization. The Local 600 respondents further suggest that, apart from the Eighth Circuit's focus on the IBT constitutional limitations, petitioners exceeded the fair range of reasonableness accorded union officials by the LMRDA and violated their federally-imposed fiduciary duties to put their obligations to the union and its members ahead of any personal interest or gain. **See, Johnson v. Nelson,** 325 F.2d 646 (8th Cir. 1963); **Morrissey v. Curran,** 650 F.2d 1267 (2nd Cir. 1981); **Brink v. DaLesio,** 667 F.2d 420 (4th Cir. 1982).

Petitioners object to the Eighth Circuit's decision, however, on the grounds that the court of appeals affirmed the district court "on theories resting on common law prin-

ciples." (Petition, p. 5.) This argument ignores the fact that the Eighth Circuit acknowledged the ERISA basis of petitioners' claims, but held that petitioners had not established that Local 600 had implemented a severance benefit plan. Contrary to petitioners' implications, the Eighth Circuit did not exempt an unfunded union severance pay plan from civil action under ERISA or place an additional burden on petitioners "by imputing a 'bad boy' clause to the ERISA statute." (Petition pp. 5-6.) Rather, the Eighth Circuit told petitioners they had not satisfied an essential element of their burden of proof.

Even if petitioners had succeeded in establishing that Local 600 had implemented a severance benefit plan, the facts of record would still have required a decision denying petitioners severance pay. Considering Local 600's financial plight, the Local 600 respondents submit that they acted reasonably and properly in refusing petitioners' extravagant severance pay demands. However, petitioners completely failed to argue to the Eighth Circuit that the Local 600 respondents had acted arbitrarily, capriciously, or in bad faith, which is a showing petitioners would have had to have made in order to have obtained the reversal of the Local 600 executive board decision denying them severance pay. **See, Short v. Central States, Southeast and Southwest Areas Pension Fund,** 729 F.2d 567, 571 (8th Cir. 1984).

Petitioners have failed to direct the Court's attention to any decision alleged to be in conflict with the Eighth Circuit's decision here. Petitioners have also failed to explain the significance of the unique facts of this case to matters beyond the instant circumstances. Petitioners attempt to argue that:

> [b]y reversing the Eighth Circuit and permitting a trial on the merits, this Court will substantially enhance the body of federal common law relating to unfunded welfare benefit plans and the rights and remedies of

union officers and agents who are integral components of interstate commerce in this nation.

(Petition, p. 6.) However, without identifying any genuine issues of material fact, this claim merely evidences a misperception of this Court's pronouncements on the propriety of summary judgment. **See, Anderson v. Liberty Lobby, Inc.,** 477 U.S. 242 (1986); **Matsushita Electric Industrial Co. v. Zenith Radio Corp.,** 475 U.S. 574 (1986). This is simply a case of a failure of proof which does not warrant this Court's review.

CONCLUSION

For these reasons, Respondents Barnes, Kon, Robertson and Mason respectfully request the Court to deny the petition for a writ of certiorari.

Respectfully submitted,

.....

CARY HAMMOND

.....

JAN BOND

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